

EXHIBIT 9

Johnstown - Erie - Pittsburgh - Greensburg
866-565-1929

NETWORK DEPOSITION SERVICES
Transcript of Kathy Boockvar 30 (b) (6)

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1 Correct?

2 A. That's what it's dated.

3 Q. So it would have been issued before the
4 enactment of Act 77. Correct?

5 A. Correct.

6 Q. Has this guidance been updated since the
7 enactment of Act 77?

8 A. So it's very small, so I guess I'm going to
9 try to click on it from the chat.

10 THE VIDEOGRAPHER: I can zoom in. Just give
11 me one moment, please.

12 I'm trying to share the exhibits in the chat
13 real quick.

14 Okay. What part would you like me to zoom in
15 on?

16 MS. MCGEE: Go back to the first page.

17 THE VIDEOGRAPHER: Sure.

18 MS. MCGEE: And all the way down to -- well,
19 that's okay for now.

20 BY MS. MCGEE:

21 Q. Can you see that better, Secretary?

22 A. Yes.

23 Q. And my question to you was, has this guidance
24 been updated since the enactment of Act 77?

25 A. And again, you know, I can't see the whole

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1 document at once, but I would say this document itself
2 does not -- this guidance itself, as a whole, I am not
3 aware has been updated. But I can't, without reading
4 through it, tell you whether any piece of it has, in
5 fact, been updated.

6 Q. Okay. Well, do you want to take a moment and
7 read through it?

8 Are you able to access it from the chat, to
9 pull it up on your own?

10 A. Is that Exhibit 2?

11 Q. Yes.

12 A. So your question is -- is your question
13 still, has this been updated?

14 Q. Yes.

15 A. So -- and I think there are pieces of this
16 that I know are in related issues that were
17 in guidances issued in 2016, like this last section
18 where it talks about -- you know, interference or
19 intimidation, harassment, I know I've seen in more
20 recent 2016 guidance. But this has not been updated,
21 this guidance, since Act 77, that I'm aware of.

22 Q. Why not?

23 A. Just there's all kinds of guidance. This
24 is -- Act 77, as you know, was just signed into law on
25 October 31, 2019. You know, June 2 was the first

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1 1223. It was issued by the Pennsylvania Supreme Court
2 on May 8th -- March 8th, 2004.

3 During your negotiations with the General
4 Assembly over Act 77, were you or the Pennsylvania
5 Department of State aware of this decision?

6 MR. DONOVAN: Objection to form.

7 A I can't answer that. I was not. I can't
8 answer that for other people.

9 Q When was the first time you learned of this
10 decision?

11 A By name?

12 Q Yes.

13 A Yesterday.

14 Q So prior to yesterday, you had never heard
15 of the In Re: Canvass of Absentee Ballots of the
16 November 4th, 2003 general election?

17 A No. And I apologize, because I understand
18 you were involved in this case. But no, this is not
19 something I was aware of.

20 Q Prior to your negotiations with the General
21 Assembly over Act 77, did you have any understanding
22 as to whether or not third party delivery of absentee
23 ballots was permitted in Pennsylvania?

24 A Yes. I had an understanding.

25 Q What understanding did you have prior to

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1 the enactment of Act 77?

2 A The same understanding I have now, which is
3 that third party delivery is not permitted under
4 Pennsylvania law except for with emergency absentee
5 ballots, or when a voter specifically designates an
6 agent, and the agent -- the voter with disabilities --
7 or disabilities designates an agent, and the agent
8 accepts that appointment by the voter.

9 Q And on what do you base that understanding?
10 How did you learn of that?

11 MR. DONOVAN: Based on your experience.
12 Not anything staff may have given you legal
13 advice on. Your understanding.

14 A It is long-time, well-established law in
15 Pennsylvania.

16 Q Are you aware of any provision in the
17 election code which says that a ballot delivered by a
18 person other than the elector renders that ballot
19 void?

20 MR. DONOVAN: Object to form. To the
21 extent you know. He is asking a specific code.

22 A I don't know.

23 Q Are you aware of the fact that the case
24 that we have marked Exhibit 6 is the case which
25 established, or at least reaffirmed the principle that

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1 non-disabled voters that have been personally
2 delivered to the election board offices by somebody
3 other than the voter?

4 A No. You used the word "many"? No.

5 Are there some examples that were reported
6 in the Act 35 report of a handful of counties who -- I
7 don't even know that it is a full handful. There were
8 several, at least one or two counties who said that
9 they realized that some of their staff had wrongly
10 accepted ballots from spouses of voters.

11 I think there was one that didn't count
12 when an aide, maybe, in a home health care setting
13 tried to deliver multiple ballots, but they did not
14 count them. So there were a couple of counties that
15 caught it.

16 Q Isn't it true that despite the decision in
17 2004, many county election boards have no procedures
18 in place to verify that the person returning a ballot
19 is the non-disabled person who voted the ballot?

20 MR. DONOVAN: Ron, every time you try to
21 ask the question, I will object. If you just
22 want to ask a plain question, I would ask you do
23 that. Otherwise, it is an improper question.
24 Since you already established she has no
25 foundation to talk about this decision.

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1 recall. I believe the answer is yes.

2 MR. BRIER: Don't guess.

3 A I just can't recall for certain.

4 Q But you do recall that Ms. Degraffenreid
5 was involved in doing that research?

6 A Yes. She comes with many years of
7 experience herself. And she was involved in doing
8 research on this and a number of other items related
9 to our guidance.

10 Q What other items was she involved in,
11 involving the January 10, 2020 guidance?

12 A Well --

13 MR. BRIER: I am going to instruct you not
14 to answer. You are going into deliberative
15 process. You have the guidance. That is what is
16 relevant. He already said he wasn't sure she was
17 there in January of 2020.

18 A I will go back --

19 MR. BRIER: You don't have to answer.

20 Q Do you have something else you need to say,
21 Mr. Marks, to clarify a prior answer?

22 MR. BRIER: I told him not to answer. You
23 are into deliberative process.

24 Q You do realize, Mr. Marks, I wasn't asking
25 you to disclose what Ms. Degraffenreid's deliberations

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1 were, but just whether or not she was involved in any
2 of the processes?

3 MR. BRIER: You asked him what issues she
4 was involved in in January 2020. He already said
5 he doesn't know if she was there then.

6 Q I believe he indicated that she had other
7 involvement. I was following up on his question,
8 which means that he disclosed it, which means it is
9 waived at that point.

10 MR. BRIER: I disagree with you. I have
11 been giving you some latitude. If you want me to
12 take a more strict position, I will.

13 Q Let me show you what we marked as Exhibit
14 19.

15 (Thereupon, Exhibit No. 19 was marked for
16 identification.)

17 Q JM21.

18 MR. BRIER: I'm sorry, I'm trying to find
19 it.

20 Q The document PADOS534.

21 MR. BRIER: Thank you. I have it. This is
22 exhibit what, 19?

23 MR. HICKS: 19.

24 MR. BRIER: Thank you. The witness has it.

25 Q Mr. Marks, have you seen Exhibit 19 before?

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1 Q We will mark this as Exhibit 14.

2 If you could go ahead and scroll through
3 Exhibit 14.

4 A Okay.

5 Q Did you have any involvement in the
6 preparation of what has been marked Exhibit 14?

7 A I reviewed it, probably offered edits along
8 the way. But I think Jonathan Marks was the primary
9 drafter. I think I was away on vacation during some
10 of the editing process. But I was involved.

11 Q The particular guidance itself is titled
12 "Pennsylvania applications and balloting guidance,
13 mail-in and absentee ballots and voter registration
14 changes." Correct?

15 A Correct.

16 Q This is guidance dated January 10th, 2020.
17 Correct?

18 A Correct.

19 Q Let me turn your attention to the second
20 page of the document. The guidance states up in the
21 upper right -- upper first paragraph that the guidance
22 defines both what is required by Act 77 and what is
23 permissible under Act 77 or some other portion of the
24 election code.

25 Do you see that?

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1 reviewed their resources. I'm not sure what they
2 have. Whether that includes the studies you are
3 referring to.

4 But there is no lack of information out
5 there from other states and nationally that show --
6 that helps guide this. This is, obviously, the first
7 time, again, we had this historic bipartisan
8 legislation allowing every voter to vote by mail. And
9 I'm sure that we looked at patterns that have been
10 obtained by other states.

11 Q But as you sit here right now, you don't
12 recall any particular study that was used to create
13 the guidance -- or the information and the guidance
14 marked as Exhibit 14. Correct?

15 A Correct.

16 Q Going down to the bottom of page 5,
17 carrying over to the top of page 6, would it be
18 accurate to say that this guidance on January 10th,
19 2020 is the first time that the Department of State
20 had suggested the use of collecting mail-in or
21 absentee ballots via drop boxes or other collection
22 locations?

23 A It's the first time I am aware of. Again,
24 I am not -- I can't speak for years before. This is
25 the first time I'm aware of, in my tenure in recent

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1 years, that anything was put out by the Department of
2 State discussing drop boxes.

3 Q Do you agree with me that there is -- to
4 the best of your knowledge, the words "other secure
5 ballot collection locations" does not appear in the
6 election code?

7 A I'm sorry?

8 Q You see where it says, "In addition to
9 CEOs," county election offices, you use the words
10 counties may provide for, quote, "other secure ballot
11 collection locations"?

12 Do you see that?

13 A I see that.

14 Q Bottom of page 5. My question is do you
15 agree that the words "other secure ballot collection
16 locations" does not appear in the election code?

17 A I don't know that. I am sure each of those
18 words does appear many times in the election code.
19 But I don't know whether they all appear in one place.

20 Q Turning over to page 6, there are two
21 bullet items that have notations where it directs the
22 county boards of elections to contact the Department
23 of State for additional guidance.

24 Do you see that?

25 A Yes.

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1 out to the county to reach out about it. We
2 integrated those things into the guidance we put out
3 earlier this week.

4 Q You agree with me on page 5 and 6 of the
5 January 10, 2020 guidance -- in fact, on all the pages
6 of the January 10, 2020 guidance there is no mention
7 that counties need to make certain that they prohibit
8 third party delivery of absentee or mail-in ballots
9 cast by non-disabled voters. Correct?

10 A Correct. Again, that wasn't new. This was
11 a document trying to give a sense of new provisions or
12 old provisions that were newly relevant because of the
13 new laws.

14 For example, like I was talking, even drop
15 boxes, in the 2016 Presidential primary we had a total
16 of 84,000 absentee ballots statewide cast. In 2020 we
17 had almost 1.5 million mail-in and absentee ballots
18 cast.

19 So 84,000 statewide, there was no demand,
20 frankly, for drop boxes. So this is really the first
21 time that we realize that it may be something that
22 counties would want to consider.

23 As I mentioned earlier, Act 77, which
24 created more change in how we vote in Pennsylvania and
25 various different processes and opportunities for

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1 prior to an election. Correct?

2 A Correct.

3 Q What under the Act 77 or other provision of
4 the election code requires county board of elections
5 to submit ballot return plans to the Department of
6 State?

7 A It doesn't require. This is guidance.
8 It's not a directive. This is our -- what we are
9 suggesting, in order to fulfill some of the other
10 sections of the code relating to -- not just the code.

11 I mean, for election administration best
12 practices, the advantage of having a plan far enough
13 out is that you can make sure that there is notice to
14 the voters, and an opportunity to have signage and so
15 forth, and really figure out the various factors that
16 you see throughout here.

17 Are they located -- accessible to voters
18 and so forth. So it's really -- it says "should." It
19 doesn't say "shall." This is guidance to bring about
20 to make it easier for counties to think about the
21 considerations they should keep in mind while they are
22 doing this.

23 Q And what happens, if a county board of
24 elections doesn't submit a plan either at all or on or
25 before the 45 days?

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1 A There is -- I do not believe I have
2 enforcement penalty authority, if they do not. This
3 is guidance.

4 Q If a county board of election doesn't
5 either submit a plan, or doesn't meet the 45 day
6 deadline, there is no action the Department of State
7 is going to take against them?

8 MR. DONOVAN: Objection. Calls for
9 speculation. We haven't reached that period yet.

10 Q Is that your understanding?

11 MR. DONOVAN: I object to form.

12 A It is a different question anyway. Because
13 we would -- if we -- frankly, we are very much in
14 close contact with the counties. And so, usually we
15 know we are likely to hear what their plans are. This
16 just formalizes it to some degree.

17 So if we hear that -- again, this is all
18 developing. This is going to be the second election
19 in November since Act 77 was passed. Some of the
20 provisions of Act 77 don't even take effect. They are
21 taking effect for the first time in November.

22 So this is a continuing process, where we
23 want the counties to learn from their experiences in
24 the primary, other counties' experiences in the
25 primary.

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1 And one of the things I think we learned is
2 the more time ahead of time they could plan these
3 things, the easier it will be for voters to access to
4 the site and have awareness of what their options are.
5 This is all for those purposes.

6 So if we were to hear that a county was
7 developing what sounded like a plan and hadn't
8 submitted a plan, we would reach out and ask them for
9 a plan.

10 Q But if a county board of election did not
11 submit a plan, it's not being barred from using drop
12 boxes. Correct?

13 A Again, I think that is a speculative
14 question. I haven't gotten to that point yet, to see
15 what would happen at that point. I, honestly, don't
16 expect it to happen, because this plan also provides
17 for supplemental plans to be submitted.

18 So what I expect to happen, again, this is
19 based on somewhat on what we saw in the primary, is
20 that 45 days out, they may not know all of the
21 circumstances.

22 We don't know -- for example, COVID-19, the
23 progression of how bad that got, the closures that
24 happened, and then some counties started opening up
25 towards the end, right before the primary.

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1 So things changed. So this allows -- the
2 guidance recognizes that circumstances change.
3 Counties may decide that after -- like in the last two
4 weeks before the election, they may want to add
5 additional ballot collection sites.

6 So we are expecting this is going to be a
7 conversation with the counties about how to help them
8 provide the most secure and accessible options for
9 voting to voters, both in-person and by mail and
10 absentee.

11 Q If I understand correctly, the 45 day
12 deadline, that is September 19, 2020. Correct?

13 A I didn't do the math.

14 Q Is that 45 day deadline somewhere in the
15 election code?

16 A I think I already answered that question.
17 No. Not that I am aware.

18 Q Isn't it also true that absentee and
19 mail-in ballots and instructions are to start to be
20 mailed out to voters by Tuesday, August 25th, 2020?

21 A Sorry?

22 Q Isn't it true that absentee and mail-in
23 ballots and instructions are to be mailed to voters by
24 Tuesday, August 25th, 2020?

25 A No. There are provisions in the law that

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1 talk about if there is not -- like right now, there is
2 pending challenges in court, statewide challenges to
3 the ballot. So no, it is not mandated that ballots
4 start to be mailed out when there is pending court
5 cases.

6 Q Under section 1.1, you say that county
7 boards of election may establish multiple ballot
8 return locations where voters may return their own
9 voted ballot.

10 Did I read that correctly?

11 A Yes.

12 Q Is there any limitation on the number of
13 return ballot locations that a county may use?

14 A No.

15 Q Has the Department of State published any
16 guidance on what it would consider to be an
17 appropriate number of return ballot locations that a
18 county should use?

19 A No. I mean, I think in here we give the
20 factors they may want to consider including heavy
21 traffic areas. You can look at the list of bullets
22 under 1.2.1.

23 If a county -- and counties sometimes reach
24 out to us and ask us whether there is additional
25 information. Whether it is this issue or others, just

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1 because this guy has these eight pages of information,
2 they know they can reach out to us and say, "Do you
3 have suggestions about a per capita number of drop
4 boxes or Ballot Return Sites that other states have
5 used and that won't be able to go to other resources?"
6 And follow up with them and give them additional
7 information.

8 Q Have any counties asked you for that type
9 of information?

10 A Me personally, no. But I can't speak for
11 anybody else in the Department.

12 Q You mentioned section 1.2.1 of the guidance
13 on page 3. You identify a number of suggestions for
14 locations.

15 Correct?

16 A Correct.

17 Q Does section 1.2.1 authorize the use of
18 drop boxes in parking lots?

19 MR. DONOVAN: Objection to form.

20 A I mean, what this says is sites may
21 include, but are not limited to city and municipal
22 facilities, public libraries, county facilities, or
23 other locations designated by the board to receive
24 ballots.

25 It doesn't specifically prohibit --

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1 obviously, again, this is guidance. I don't know that
2 it mentions anything about lots. I can look through
3 this.

4 Q Does the Department of State believe it is
5 appropriate to put drop boxes in a parking lot?

6 A I think the Department --

7 MR. DONOVAN: I object to form. Go ahead.

8 A I think what is important is that the
9 Department of State believes there needs to be --
10 other factors need to be met. So if there is adequate
11 security. If there is adequate equipment. If there
12 is either staffing and/or cameras, if there is chain
13 of custody processes, if the collection site or
14 equipment is secure. Obviously, there is eight pages
15 of stuff here.

16 If everything else is in place, that is
17 what matters more than the specific location of the
18 site.

19 Q So the Department of State doesn't prohibit
20 a drop box from being in a parking lot?

21 MR. DONOVAN: Objection. Form. Asked and
22 answered.

23 MR. HICKS: I didn't get an answer.

24 Q Is it the Department of State's position
25 that drop boxes in parking lots are permissible?

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1 MR. DONOVAN: Mr. Court Reporter, could you
2 read back the last answer to the last question
3 she gave? I think she did answer at the end,
4 Ron.

5 Q Okay. I didn't hear that. We are missing
6 some communication sometimes.

7 Is it the Department of State's position
8 that drop boxes are okay in public parks?

9 A What I would say, again, what is more
10 important is that the security, the durability, the
11 chain of custody, signage, accessibility, all these
12 other factors that go on for eight pages, this is what
13 matters.

14 There is a million different scenarios you
15 could ask about. And my answer is always going to be
16 tell me all the details -- answers to these other
17 questions. I can't know the answer to the question
18 without knowing whether all these other factors are
19 accounted for.

20 Q Does the Department of State believe that
21 it is okay to have drop boxes in elected officials'
22 offices or in union halls?

23 A I would prefer not to have drop boxes in
24 elected officials' facilities or union halls,
25 preferably. That is my opinion.

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1 Q You also state the Department of State has
2 no ability to independently verify or guarantee the
3 accuracy of the data that was received solely from the
4 county board of elections, correct?

5 A Correct.

6 Q I'm sorry. Was there an answer?

7 A I said correct. Can you hear me okay?

8 Q Yes. I didn't hear the answer to the last
9 one.

10 When you say that the Department has no
11 ability to independently verify or guarantee the
12 accuracy of the data, what do you mean by that?

13 A You have to go one by one through the
14 chart. So the things that we have access to are
15 identified. The things we don't have access to. You
16 asked the question, and now I don't remember what it
17 was. And maybe there are a couple questions. You
18 would really have to go to the counties for that.
19 That is because we don't have all of the data.

20 Again, we are in a Commonwealth. We have a
21 decentralized system of elections. Some authority is
22 in the counties, some authority is in state, some
23 authority comes from the Federal government. We all
24 work together to provide democracy to our citizens.

25 Q Does the Act 35 report, that has been

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1 marked as Exhibit 18, does it include all of the
2 information that was provided by the counties as part
3 of the Act 35 surveys?

4 A I am not sure -- I mean, I have not looked
5 at the language of the exact questions. My
6 understanding is we only asked the questions that then
7 we have the data reported here. But I don't know the
8 answer -- the exact answer to your question.

9 Q Was the Department pressured to get this
10 report quickly?

11 A We had a deadline.

12 Q When was the first time a draft circulated
13 internally for comment?

14 A I have no idea.

15 Q Do you know how many drafts were circulated
16 before it became final?

17 A No idea.

18 Q Was there one person who served as the lead
19 person in terms of the drafting of the report?

20 A No. It was the people that I already
21 mentioned.

22 Q Are you aware of the fact that the report
23 doesn't disclose all of the information that was
24 provided by the counties?

25 MR. DONOVAN: Object to the form.

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1 Now we have voter verifiable paper ballots for every
2 voter.

3 In fact, we just piloted a statewide risk
4 forming audit pilot, and this is something we are
5 implementing to add an additional level of security,
6 strongly supported by the Trump administration to make
7 sure that we have an added level of verifiability as
8 to the integrity of the voting process.

9 So I think all of that could be protected
10 without poll watchers. But I think poll watchers are
11 a good thing.

12 Q Do you agree with me under the election
13 code, there is a -- with regard to absentee and
14 mail-in balloting, candidates may have representatives
15 attend the prec canvass and the canvass?

16 A I am aware of that. Yes.

17 Q And do you also agree that representatives
18 do not necessarily have to be watchers, poll watchers?

19 A Correct.

20 Q In fact, the representative could be a
21 non-Pennsylvania citizen. Correct?

22 A I don't know that. I think so. Did you
23 say resident? Or are you saying citizen?

24 Q A non-resident or non-citizen of
25 Pennsylvania can be a representative and attend a